



UNITED STATES MARINE CORPS

OFFICE OF THE STAFF JUDGE ADVOCATE

1ST MARINE DIVISION (REIM)

BOX 555381

CAMP PENDLETON, CALIFORNIA 92055-5381

IN REPLY REFER TO:

5811

SJA

31 Mar 14

From: Staff Judge Advocate, 1st Marine Division
To: Commanding Officer, Headquarters and Service Battalion, Marine
Corps Base Camp Pendleton

Subj: RECOMMENDATION AS TO DISPOSITION ICO UNITED STATES V. LANCE
CORPORAL RICHARD A. KEARNEY, USMC

Ref: (a) NCIS Investigation (13JUN13-CALE-0566-8SMA/T)
(b) RTC/HQE Memo dtd 28 Mar 14
(c) Victim Declination Memo dtd 06 Mar 14

1. I have thoroughly analyzed reference (a) for prosecutorial merit. This matter was sent to me for SJA review due to the fact that Lance Corporal Kearney is currently assigned to the Office of the Staff Judge Advocate, Marine Corps Installations-West (MCI-W). The MCI-W SJA would have normally done the review for your command, but due to the appearance of a conflict in this case, I am doing the review for your command. I concur with the Regional Trial Counsel (RTC) and Highly Qualified Expert (HQE) in reference (b) that charges in this case should not be preferred and that no further action is warranted in this case.

2. Reference (c) is the victim's written communication in this matter that she no longer wishes to participate in the military justice process. Without her participation, there are no viable charges in this case at court-martial. Due to a delay in reporting by the victim of approximately two years from the time of the alleged incident, no forensic evidence was able to be secured and analyzed. Also, multiple witnesses in reference (a) support evidence of a possible consensual sexual relationship between the victim and Lance Corporal Kearney during the relevant time-frame. I believe that military prosecutors have made all reasonable efforts to secure the victim's participation in this case.

3. Because of the overall evidentiary weakness of the case, and the lack of victim participation, I also do not recommend processing Lance Corporal Kearney for administrative separation in this matter. The state of the evidence does not support that the allegations more likely occurred than not. I may be reached at (760) 725-5972 if you have any questions about this matter.

(b) (6)